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IN THE

Supreme Court of the United States

OCTOBER TERM, 1977

No. 77-1365

NORMAN F. DACEY, *Petitioner,*

v.

CHARLES S. HOUSE, ALVA P. LOISELLE, JOSEPH W. BOGDANSKI, JOSEPH S. LONGO, and WILLIAM P. BARBER, *Respondents.*

and

NORMAN F. DACEY, *Petitioner,*

v.

PETER C. DORSEY, *Respondent.*

ON PETITION FOR WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF OF RESPONDENTS, CHARLES S. HOUSE, ALVA P. LOISELLE, JOSEPH W. BOGDANSKI, JOSEPH S. LONGO, AND WILLIAM P. BARBER, CHIEF JUSTICE AND ASSOCIATE JUSTICES, RESPECTIVELY, OF THE SUPREME COURT OF CONNECTICUT IN OPPOSITION

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QUESTION PRESENTED FOR REVIEW

Where a federal civil rights suit has been filed seeking damages against Justices of the State Supreme Court for their refusal to disqualify themselves in an appeal, was not the District Court correct in dismissing the Complaint on the basis of judicial immunity?

STATEMENT OF THE CASE

Plaintiff-petitioner, Norman F. Dacey acting *pro se*, filed a federal civil rights action against the Chief Justice and four (4) Associate Justices of the State Supreme Court of Connecticut. He sought Ten Million Dollars ($10,000,000.00) damages for their refusal to disqualify themselves in an appeal which had been brought by the Connecticut Bar Association from a Sixty Thousand Dollar ($60,000) jury verdict that had been rendered in Mr. Dacey's favor on June 13, 1974. The federal Complaint, brought pursuant to 42 U.S.C. § 1983 and citing as jurisdiction 28 U.S.C. § 1343, was filed in the United States District Court for the District of Connecticut on May 20, 1976. After a hearing, the Court, the Honorable Robert C. Zampano, United States District Judge, granted the Motion To Dismiss on February 16, 1977, which had been filed by the defendant-respondent Justices. The plaintiff then moved to amend or alter the Judgment on March 2, 1977. The motion was denied by the Court on May 19, 1977.

An appeal was subsequently taken to the U.S. Court of Appeals for the Second Circuit, which affirmed the judgment on October 28, 1977 on the basis of "the well-established principle that judges are absolutely immune from suits for damages based on acts within their jurisdiction." Appendix to petition, pp. C-1-2. A petition for rehearing was denied on November 28, 1977.[1]

The basic facts of the Complaint may be gleaned from the decision of the State Supreme Court which the District Court judicially noticed, *Norman F. Dacey* v. *Connecticut Bar Association*, 170 Conn. 520, 368 A.2d 125 (1976), together with the Record in that case contained in A-607, Connecticut

[1] It is noted that in the companion suit against Respondent Dorsey, the Respondent Justices were not parties.

Supreme Court Records And Briefs, Part 1, (December Term, 1975).

Mr. Dacey is the author of a book entitled *"How To Avoid Probate!"*. Subsequent to the publication of this book, the Connecticut Bar Association published a pamphlet entitled *"Understanding Probate! or Don't Be Dead-Wrong!"*. Mr. Dacey then brought an action for libel against the Bar Association based upon statements contained in that pamphlet. He obtained a jury award of Sixty Thousand Dollars ($60,000) in general damages in addition to exemplary damages of $7,887.50 in the Superior Court for Fairfield County. An appeal from this verdict and judgment was taken by the Bar Association to the State Supreme Court.

On October 24, 1974, counsel for both parties in that case were notified by the Reporter of Judicial Decisions as follows:

> "The Chief Justice further requested that I bring to your attention the fact that all justices of the Supreme Court are members of The Connecticut Bar Association and to inquire if either of you intends to raise this issue as a possible bar to their hearing the appeal."
>
> Appendix to plaintiff's State Supreme Court Brief, pp. 15a-16a, contained in *Records And Briefs, supra.*

Mr. Dacey then moved on or about November 3, 1974, that the Justices of the Supreme Court disqualify themselves from hearing the appeal. The motion was denied on November 12, 1974.[2]

The Board of Governors of the Connecticut Bar Association then adopted a resolution on January 20, 1975, providing in essence that the dues of any Superior Court Judge and Supreme Court Justice who participated in any stage in the *Dacey* case

[2] See Complaint, Paragraphs 19 and 20, petitioner's appendix p. A 7.

would be suspended in an amount equal to the pro rata share owed by each member of the Bar Association for satisfaction of any money judgment in favor of the plaintiff. (Appendix to plaintiff's State Supreme Court Brief, pp. 16a-17a, contained in *Records And Briefs, supra.)*

It is also noted that the pro rata share of each member for the amount of the verdict, exemplary damages and interest as of November 1, 1975 was calculated at approximately $16.33. (Appendix to defendant's State Supreme Court Reply Brief, p. 1a, contained in *Records And Briefs, supra.)*

As the State Supreme Court pointed out in its opinion, a full appellate court could not be formed from among the total membership of that court as well as the Superior Court (the trial court of general jurisdiction) if members of the Connecticut Bar Association were to be excluded. *Dacey* v. *Connecticut Bar Association, supra,* 170 Conn. at 524. Thus, it is obvious that plaintiff-petitioner's attempt to have the Supreme Court recuse itself would have had the coincidental effect of precluding any appeal from the judgment obtained in his favor. It would have virtually denied the defendant, the Connecticut Bar Association, a hearing before any appellate tribunal. The only exception to this would have been the hypothetical possibility of seeking a petition for a writ of certiorari from the United States Supreme Court to the Superior Court, not the State Supreme Court, a recourse which was at best speculative and remote.

The State Supreme Court also indicated that apart from the resolution of the Bar Association which would have avoided any contribution by the justices in payment of the judgment, the pecuniary interest of each member of the Court was in essence *de minimis.* It was comparable to that of a judge who presides in a tax appeal involving a town in which he was a taxpayer. *Id.* at 523-4.

Accordingly, the State Supreme Court heard the appeal and held that the evidence in the lower court was required to prove actual malice with "convincing clarity" pursuant to *New York Times Co.* v. *Sullivan,* 376 U.S. 254, 285-286 (1964) and other U.S. Supreme Court decisions dealing with First Amendment considerations where a public figure is the subject of criticism.[3] The judgment was set aside due to the refusal of the Superior Court judge to charge the jury to this effect, and a new trial was ordered. The State Supreme Court's decision was released on April 6, 1976.

No petition for certiorari was filed or other form of review by the U.S. Supreme Court sought in respect to the State Supreme Court ruling. Instead, the § 1983 damage suit was lodged in Federal District Court as previously stated.

• • •

Several other matters may be briefly noted. Plaintiff-petitioner in his brief states that the U.S. District Court Judge, (Zampano, J.), who was also a member of the Connecticut Bar Association,

> ". . . declined to recuse or disqualify himself, even when reminded that Canon 3 required him to disqualify himself if his impartiality 'might reasonably be questioned,' and despite the existence of Title 28 U.S. Code Sections 144 and 455. . . ."
>
> Petition, p. 13.

The plaintiff-petitioner, however, fails to disclose that Judge Zampano expressly gave him an opportunity to file a motion

---

[3] It was stipulated in the State Superior Court that plaintiff, whose book, *"How To Avoid Probate!"* had sold nearly one million copies up to that time, was a public figure. Appendix to defendant's State Supreme Court brief, p. 1a, 37a, contained in *Records And Briefs, supra.*

to disqualify, but that the plaintiff-petitioner declined to do so. The Transcript in this respect is as follows:

"MR. DACEY: I wondered if your Honor was identified with or associated or otherwise connected with any of the parties to this controversy, specifically, the Connecticut Bar Association. I assume, were you, you would have disclosed it.

"THE COURT: I'm a member of the Connecticut Bar Association —

"MR. DACEY: Does your Honor —

"THE COURT: — I was a lawyer for some years.

"MR. DACEY: I see. Has your Honor considered the applicability of Title 28, Section 455?

"THE COURT: Well, are you moving pursuant to that? I'll entertain a motion.

"MR. DACEY: I'm merely inviting your Honor to indicate that he is completely impartial.

"THE COURT: Well, I hope so. I feel so. But if there's a motion, I will entertain it. I am a member of the Connecticut Bar Association, of course. I have been a member for a good many years. And the American Bar Association.

"MR. DACEY: Yes. Section 455 apparently places the burden upon the judge to disqualify himself if there exists any impediment, and so I will leave it to your Honor.

"THE COURT: Very well. Your comments are noted. Anything further?

"MR. DACEY: Thank you, sir.

"THE COURT: All right, we will reserve."

Tr., pp. 2-4.

The petition for certiorari is incorrect in another respect in referring to a related case brought by the petitioner against another judge, *Norman F. Dacey* v. *Henry J. Naruk*, U.S.D.C., D.Conn. Civ. No. B-77-269, Jan. 30, 1978. The petition states:

> ". . . When Dacey learned that Judge Newman was in fact a member of the Bar Association, he filed an Affidavit of Prejudice under Title 28 U.S.C. Code Section 144, calling upon Judge Newman to vacate his rulings and recuse himself. This Judge Newman did, acknowledging that the fact of his membership in the Association could raise a question of his impartiality. The action is now awaiting assignment to a visiting judge from outside the Connecticut District. . . ."

Petition, p. 16.

A similar representation is made in page 5 of the Petition to the effect that Judge Newman had ruled that "a judge holding membership in the Connecticut Bar Association should properly recuse himself in any action involving the Association."

Judge Newman did not rule that disqualification was required. Instead, he stated that he was willing to do so to avoid any possible question, even though it was "extremely doubtful" that recusal was necessary in that case.

The pertinent portion of his ruling states:

> "The absence of an affidavit, i.e., a sworn statement of grounds for disqualification, can perhaps be overlooked in this case, since plaintiff's sole factual allegation, my membership in the Connecticut Bar Association, is beyond

dispute. Plaintiff's claim that this fact was somehow 'concealed' from him and that he 'just became aware' of it when he filed his motion on December 5 cannot be accepted at face value, since plaintiff made a telephone inquiry to my chambers some weeks before the filing of his motion and was specifically told that I was a member of the Connecticut Bar Association. It is extremely doubtful that this fact affords any legal basis for disqualification. As originally filed, plaintiff alleged a dispute with Judge Naruk, and the claim against Judge Naruk, even if not barred by the doctrine of judicial immunity, would in no event be satisfied by funds of the Connecticut Bar Association. However, there are occasional situations where even though recusal is not required, it may be appropriate to eliminate even the slightest question concerning the impartiality of a judge. Since this litigation is alleged to concern a member of the judiciary, it may be appropriate, even in the absence of legally valid grounds for disqualification, to make sure that the judge deciding this case is one against whom plaintiff can make no complaint whatever. Of course, all members of this Court are members of the Connecticut Bar Association, but since this District has available to it the occasional services of visiting judges from within the Second Circuit who are not members of the Connecticut Bar Association, I am perfectly willing to vacate my prior orders in this case, recuse myself, and ask the Chief Judge of this District to make a reassignment to a visiting judge."

Appendix to Petition, pp. K-2 - K-3.

ARGUMENT

A.

DAMAGES AGAINST STATE SUPREME COURT JUSTICES BARRED BY JUDICIAL IMMUNITY.

We begin with the recent decision reaffirming the well recognized principles of judicial immunity in *Stump, et al. v. Sparkman*, —— U.S. ——, 46 U.S.L.W. 4253 (March 28, 1978). In that case the Court stated:

> "The governing principle of law is well established and is not questioned by the parties. As early as 1872, the Court recognized that it was 'a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, [should] be free to act upon his own convictions, without apprehension of personal consequences to himself.' Bradley v. Fisher, supra, at 347. For that reason the Court held that 'judges of courts of superior or general jurisdiction are not liable to civil actions for their judicial acts, even when such acts are in excess of their jurisdiction, and are alleged to have been done maliciously or corruptly.' 13 Wall., at 351. Later we held that this doctrine of judicial immunity was applicable in suits under § 1 of the Civil Rights Act of 1871, 42 U.S.C. § 1983, for the legislative record gave no indication that Congress intended to abolish this long-established principle. Pierson v. Ray, 386 U.S. 547 (1967)."

Id. at 4255.

In *Pierson* v. *Ray*, 386 U.S. 547 (1967), cited by the Court in *Stump, et al.* v. *Sparkman, supra*, it was held that a municipal police justice who had entered convictions in a criminal case was immune from damages even though one of the

convictions was ultimately reversed on appeal and the other charges subsequently withdrawn. The Court stated:

> ". . . Few doctrines were more solidly established at common law than the immunity of judges from liability for damages for acts committed within their judicial jurisdiction, as this Court recognized when it adopted the doctrine, in Bradley v. Fisher, 13 Wall. 335, 20 L.Ed. 646 (1872). This immunity applies even when the judge is accused of acting maliciously and corruptly, and it 'is not for the protection or benefit of a malicious or corrupt judge, but for the benefit of the public, whose interest it is that the judges should be at liberty to exercise their functions with independence and without fear of consequences.' (Scott v. Stansfield, L.R. 3 Ex. 220, 223 (1868), quoted in Bradley v. Fisher, supra, 349, note, at 350.) It is a judge's duty to decide all cases within his jurisdiction that are brought before him, including controversial cases that arouse the most intense feelings in the litigants. His errors may be corrected on appeal, but he should not have to fear that unsatisfied litigants may hound him with litigation charging malice or corruption. Imposing such a burden on judges would contribute not to principled and fearless decision-making but to intimidation."
>
> *Id.* at 553-554.

The doctrine of immunity, of course, is traceable to *Bradley* v. *Fisher*, 80 U.S. (13 Wall.) 335 at 347 (1872), wherein the Court emphasized:

> ". . . For it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequence to himself. Liability to answer to everyone who might feel himself aggrieved by the action of the judge, would be inconsistent with the possession of this freedom, and would destroy that independence without which no judiciary can be either respectable or useful. . . ."

In an effort to evade this doctrine, plaintiff-petitioner claims that there was no jurisdiction because the State Supreme Court Justices erroneously denied the motion for disqualification.

First, it is noted that the petition contains the following quotation purportedly taken from *Gruman* v. *Raymond and Betts*, 1 Conn. 39 (1814):

> " 'There must be a jurisdiction of the process as well as of the person and cause. *There is no process sanctioned by law in which a disqualified judge may serve on the bench.* Where there is a want of jurisdiction over the cause, it is the same as though there were no court. It is coram-non-judice. . . . Although here the justice had jurisdiction over the subject matter, yet he had *no* jurisdiction over the *process* (emphasis added).' "
>
> Petition, p. 40. (Emphasis in the petition.)[4]

The sentence which is underscored and which reads, "There is no process sanctioned by law in which a disqualified judge may serve on the bench," does not appear in any portion of the reported decision. The petition, moreover, does not appear to cite the specific page in the opinion which supposedly contains this language concerning the disqualified judge. With some modification, the first sentence in the quotation above is evidently taken from page 43 of the decision, the third sentence from page 44 and the fourth sentence from pages 46-7

[4] A portion of this quotation also appears at p. 53 of the petition.

of the case. However, the second sentence, as to disqualification, can not be found at all in the reported ruling.[5]

Wholly apart from this, the Court in *Stump, et al.* v. *Sparkman, supra,* cautioned that the concept of jurisdiction for the purpose of immunity should be liberally interpreted. There is a definite distinction between "excess of jurisdiction" and "clear absence of all jurisdiction over the subject matter." 46 U.S.L.W. at 4255, n. 6. The Court also stated:

> ". . . Because 'some of the most difficult and embarrassing questions which a judicial officer is called upon to consider and determine relate to his jurisdiction . . .,' Bradley, supra, at 352, the scope of the judge's jurisdiction must be construed broadly where the issue is the immunity of the judge. A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the 'clear absence of all jurisdiction.' 13 Wall., at 351."

Id. at 4255.

The principles of immunity, of course, are intended to ensure that justice is administered without fear or favor and that judgments are rendered on a true and principled basis.

> ". . . Despite the unfairness to litigants that sometimes results, the doctrine of judicial immunity is thought to be in the best interests of 'the proper administration of justice . . . [, for it allows] a judicial officer, in exercising the authority vested in him [to] be free to act upon his own convictions, without apprehension of personal consequences to himself.' Bradley v. Fisher, 13 Wall., at 347. . . ."

[5] We have reviewed both the 1848 and 1924 publications of this case for this purpose.

Id. at 4257.
See also Imbler v. *Pachtman,* 424 U.S. 409, 418, 422-23, N. 20 at 423 (1976).

B.

INJUNCTION CLAIM UNWARRANTED.

The plaintiff-petitioner also claims that the District Court erred in not granting injunctive relief. First, it should be noted that the prayer for relief contained in the Complaint was as follows:

> "WHEREFORE, the Plaintiff claims from the Defendants:
>
> "1. Five Million ($5,000,000.00) Dollars damages.
>
> "2. Five Million ($5,000,000.00) Dollars punitive damages.
>
> "3. Such other and further relief as the Court deems fair and equitable."
>
> Complaint, p. 10, contained in the appendix to the petition, p. A 15.

The record does not disclose that Mr. Dacey ever asked for an injunction or any other specific form of equitable relief. In fact, Mr. Dacey, in his Memorandum in opposition to the motion to dismiss dated June 21, 1976, filed in the District Court, expressly stated:

> ". . . The Plaintiff repeats: this is not an attack upon any State court proceedings; it is an action for damages against *five* individuals who deliberately violated both

State and Federal law. . . ." (Emphasis contained in the brief as quoted.)

Id., p. 2.

The request for other relief which is fair and equitable might arguably provide a sufficient basis for a trial court in fashioning equitable remedies not specifically sought in the Complaint. It is quite another thing, however, to utilize such language as grounds for seeking a reversal of the trial court for not granting an injunction that had never been applied for as such.

In any event, it is just too late in the day to override "the principles of equity, comity and federalism that must restrain a federal court when asked to enjoin a state court proceeding." *Mitchum* v. *Foster*, 407 U.S. 242 at 244 (1972). These considerations were applied only last term to federal injunctive relief against enforcement of a judgment affirmed by a State Supreme Court. *Vendo Co.* v. *Lektro-Vend Corp.*, —— U.S. ——, 97 S.Ct. 2881 (1977). It is true that the decision was based upon the Anti-Injunction Act (28 U.S.C. § 2283) which was held to preclude such intervention. However, the Court also emphasized the "historical concepts of federalism" underlying that provision. *Id. at* 2891. *See also, id.* at 2886-7. *Cf. also Trainer* v. *Hernandez*, —— U.S. ——, 97 S.Ct. 1911 (1977); *Judice* v. *Vail*, —— U.S. ——, 97 S. Ct. 1211 (1977); *Rizzo* v. *Goode*, 423 U.S. 362 (1976); *Huffman* v. *Pursue, Ltd.*, 420 U.S. 592, 601-602, *reh. den.*, 421 U.S. 971 (1975); *Younger* v. *Harris*, 401 U.S. 37 (1971).

It should further be noted that collateral attack and relitigation of a state court judgment at this point raises serious questions, to say the very least, by reason of "the normal rules of res judicata and judicial estoppel." *Huffman* v. *Pursue, Ltd., supra*, at 607, n. 18. *Cf. also Preiser* v. *Rodriguez*, 411 U.S. 475 (1973), wherein the Court noted that "*res judicata* has been

held to be fully applicable to a civil rights action brought under § 1983." *Id.* at 498.

C.

RECUSAL BY STATE SUPREME COURT INAPPROPRIATE.

As a matter of general background and information, the Connecticut Supreme Court in its decision, *supra*, provided the following reasons for its refusal to disqualify itself:

> "At the outset, the plaintiff has challenged the propriety of this court's determining the appeal. Every justice of this court is a member of the defendant association. The plaintiff's counsel does not claim personal bias on the part of any member of this court but claims that the appearance of impropriety is in issue. Further, the plaintiff suggests that the impartiality of the members of this court has been and will be questioned.
>
> "The plaintiff cites General Statutes § 51-39 and Canons 1, 2 and 3 of the Code of Judicial Conduct and argues that the special resolution passed by the defendant whereby any judge or justice who may participate in the case is exempt from the payment of any judgment rendered against the defendant is, in fact, an admission by the defendant that the members of this court have a pecuniary interest in the outcome of this appeal.
>
> "A challenge on the basis of disqualification of a judge or justice is not one which can be considered lightly. This state early has taken the view that any judge having an interest in a pending case should disqualify himself from hearing the case. Wood v. Hartford Fire Ins. Co., 13 Conn. 202, 211; see also Nettleton's Appeal, 28 Conn. 268; Cabot Bank's Appeal, 26 Conn. 7.

"In the event that the plaintiff should prevail in this appeal, the defendant has voted that the dues of each justice would be reduced so that none of the justices would contribute to the payment of the judgment. Whether this is done or not, the pecuniary interest of each justice is de minimis and is comparable to the interest of the judge that determines the tax appeal of a litigant against a town where a judge is a taxpayer. We fail to see any conflict concerning the nonfinancial interests. Furthermore, it has been held that membership in a bar association or integrated bar is not a basis for disqualification in a case in which a bar association is a party. Minnesota State Bar Assn. v. Divorce Education Associates, 300 Minn. 323, 219 N.W. 2d 920, cert. denied, sub nom. Thibodeau v. Minnesota State Bar Assn., 419 U.S. 1023, 95 S. Ct. 500, 42 L.Ed. 2d 297; In re Rhodes, 370 F.2d 411, cert. denied, 386 U.S. 999, 87 S.Ct. 1321, 18 L.Ed. 2d 349; see 46 Am. Jur. 2d, Judges, § 121.

"During oral argument when the plaintiff's counsel was told that a full court could not be formed from among the total membership of this court and the Superior Court who were not members of the defendant, counsel suggested that this court find the issues for the plaintiff and let the defendant attempt to obtain certiorari from the United States Supreme Court.

"Article fifth, § 1, of the state constitution vests the judicial power of the state in the courts. The Supreme Court exercises appellate jurisdiction as defined by law. This judicial responsibility is an attribute to sovereignty. There is a limitation upon the right or duty of judges to disqualify themselves. 'Disqualification must yield to necessity where to disqualify would destroy the only tribunal in which relief could be had and thus preclude determination of the issue. In such case it has been held,

consistently, the court must act no matter how disagreeable its task may be.' New Jersey State Bar Assn. v. New Jersey Assn of Realtor Boards, 118 N.J. Super. 203, 209, 287 A.2d 14; see Evans v. Gore, 253 U.S. 245, 247-48, 40 S.Ct. 550, 64 L.Ed. 887; Moulton v. Byrd, 224 Ala. 403, 405, 140 So. 384; Federal Construction Co. v. Curd, 179 Cal. 489, 493-94, 177 P. 469; Wheeler v. Board of Trustees, 200 Ga. 323, 326-28, 37 S.E. 2d 322; Long v. Watts, 183 N.C. 99, 102, 110 S.E. 765; First American Bank & Trust Co. v. Ellwein, 221 N.W. 2d 509, 515-16 (N.D.), cert. denied, 419 U.S. 1026, 95 S.Ct. 505, 42 L.Ed. 2d 301; Alamo Title Co. v. San Antonio Bar Assn., 360 S.W. 2d 814, 817 (Tex. Civ. App.) (application for writ of error refused, no reversible error); see also 46 Am. Jur. 2d, Judges, § 89.

"The defendant is entitled by law to appeal to this court. General Statutes § 52-263. There is no other appellate tribunal to which, under the law, the defendant can appeal. It was sued and a verdict was rendered against it. It brought the appeal in due course. Both parties have orally argued the appeal and both have submitted extensive briefs. In this situation, the only course open to us is to consider the arguments and decide the appeal. See Evans v. Gore, supra."

Dacey v. *Connecticut Bar Assn.*, *supra*, 170 Conn. 520, 522-525.

It should also be noted that in a recent decision the United States Court of Appeals for the Eighth Circuit held that mere membership in a state bar association was not cause for disqualification of members of the Court. The case involved a suit for injunctive relief as well as for damages based upon escrow account procedures. It was alleged that mortgagors were entitled to interest on funds escrowed by banks

for the purpose of taxes and insurance payments. The disqualification issue was dealt with by the Court as follows:

> "The grounds alleged by appellants for disqualification of the members of this court are (1) that the members of this court are involved with or are members of, the Minnesota Bar Association, both of which were defendants in a separate class action suit brought by the appellants and (2) that the members of this court have a 'unique relationship' with the members of the legal profession and the financial interests in the state of Minnesota and as such cannot render a fair and impartial decision. Such vague allegations of prejudice are insufficient to require disqualification of any member of this court. 28 U.S.C. § 455. See Wounded Knee Legal Defense/Offense Committee v. F.B.I., 507 F.2d 1281, 1285 (8th Cir. 1974)."
>
> *Scarrella* v. *Midwest Federal Savings and Loan*, 536 F.2d 1207 at 1209 (1976) *(per curiam) cert. den.* —— U.S. ——, 97 S.Ct. 237 (1976).

Concerning frivolous attacks upon the dignity and integrity of the judiciary, see *Town of East Haven* v. *Eastern Airlines, Inc., et al.*, 304 F.Supp. 1223 at 1225 (D.Conn. 1969) (Timbers, Chief Judge); previous decision in same case denying motion to disqualify all Connecticut federal judges, 293 F.Supp. 184 (D. Conn. 1968). *See generally, Berger* v. *United States,* 255 U.S. 22, 33-35 (1921); *Wolfson* v. *Palmieri,* 396 F.2d 121, 124 (2d Cir. 1968).

CONCLUSION

It is readily apparent that the petition for certiorari is not only without merit, but also frivolous. There is no showing whatsoever of any special or important reason for granting a writ of certiorari in this case, a writ which is not a matter of

right but instead of sound judicial discretion. Nor is there any indication that the lower courts have departed from the accepted and usual course of judicial proceedings within the meaning of Rule 19, Revised Rules of the Supreme Court of the United States.

It is therefore respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Barney Lapp, Attorney for the Respondents Charles S. House, Alva P. Loiselle, Joseph W. Bogdanski, Joseph S. Longo, and William P. Barber, Chief Justice and Associate Justices, respectively, of the Supreme Court of Connecticut, certify that on the 21st day of April, 1978, I served a copy of the foregoing Brief by mailing, United States Mail, Postage Prepaid, to the following attorneys of record:

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